port. The respondent further undertakes to turn over a new leaf, as he puts it. That is as it should be and he should certainly do so but only after the proper and necessary correction has been administered to him in accordance with established principles of law for the offences under consideration in this matter.

It is my view that particularly in these times when the unlawful possession and use of firearms is rampant and ever increasing, a custodial sentence at the very least, of a term commensurate with the circumstances of the case, is called for. The respondent should consider himself extremely fortunate not to have been charged under statutory provisions carrying more serious and enhanced penalties for offences of this nature, and a bond under section 294 of the Criminal Procedure Code would seem to me to be wholly inadequate for offences of this gravity.

The courts may not perhaps have to wholly reflect public opinion but they certainly must not be indifferent or disregard it, and it must be made abundantly clear that in the light of the appalling increase in crimes involving violence and the unlawful possession and use of lethal weapons, society is crying out 'enough is enough' and is no longer in any mood to tolerate such offenders who like serpents in the front lawn of justice disrupt law and order. So be it clearly made known that the forces of justice will be vigorously brought to bear upon these engineers of evil who must be made to realise that if they indulge in violence or arm themselves with weapons of violence they will lose their liberty if nothing else and should not hope or expect to be released on bonds which in the current upsurgence of criminal violence would perhaps be about as useful and effective as clouting a cobra with a clothes-peg and may at best only have the functional effect for the period of suretyship of causing them, in the language of the automobile, to slip their gear into neutral but keep the motor running.

I would allow the appeal and set aside the order made by the Special President under section 294 of the Criminal Procedure Code, and taking into consideration all the circumstances and in particular his age and the fact that this is his first offence, I sentence the respondent to prison for 3 years on each charge, the sentences to run concurrently; and I trust that, if it is indeed true as he alleges that he was misled by his friend, whatever that means, the clanging of prison gates, as Lawton L.J. put it in *Reg.* v. *Sargeant*[1] (at page 78) or, perhaps more appropriately transmuted in a local context, the creaking of the prison doors closing shut behind him will afford the respondent ample opportunity to ponder on his folly in the company he keeps, and give to others of his ilk and equally gullible, cause to reflect on the desirability of the company they should or rather should not keep, for, as the ancient adage goes, he who sups with the devil must use a long spoon.

Appeal allowed.

Solicitors: *Paramjit Singh & Co.*

PERNAS SECURITIES SDN. BHD. v. THE COLLECTOR OF STAMP DUTIES

[O.C.J. (Chang Min Tat J.) March 26, 1976]
[Kuala Lumpur — Originating Motion No. 59 of 1974]

Stamp Duty — Whether chargeable on loan agreement — Contention of appellant that agreement is not security — Agreement providing for separate promissory note for each instalment — Whether loan agreement is security or mere agreement — Stamp Ordinance, 1949 — Stamp Duty (Special Provisions) Malaysia Act 1967, First Schedule, Items 22(1)(a) & 27(a).

By a loan agreement executed on July 15, 1974, the lender agreed to lend to the appellant a sum of $10,000,000 upon certain terms and conditions. Clause 1 of the agreement specified the interest to be 9% on the principal loan. The whole sum was not to be immediately available but instead, it was to be given in 9 instalments spread over a year. The mode of payment and penalty for late payment were also provided. Upon each advance, the lender was to execute a promissory note.

The issue before the court was whether the proper stamp duty chargeable on the said loan agreement was as a security or as a mere agreement.

The appellant contended that the agreement was not "a security", that the security for the loan consisted of the several promissory notes and therefore the agreement was a mere agreement for the loan.

Held: (1) in construing provisions imposing the duty, strict attention must be paid to the actual words used by the legislature, but the words themselves must be understood in a 'popular sense', that is the sense which persons conversant with the subject matter with which the statute is dealing would attribute to them;

(2) the duty is imposed on the document and not on the transaction;

(3) the promissory note is a mere undertaking to repay the instalment and the agreed interest. It provides no security that is not given in the agreement and in fact the full protection of the lender is provided for in the agreement;

(4) the agreement is the principal or primary security and therefore chargeable under Item 22(1)(a) of the First Schedule to the Stamp Duty (Special Provisions) Malaysia Act 1967, at the rate set out in Item 27.

Cases referred to:-

(1) *Jones* v. *Commissioners of Inland Revenue* [1895] 1 Q.B. 484.

(2) *Independent Television Authority & Anor.* v. *Inland Revenue Commissioners* [1960] 2 All E.R. 481.

ORIGINATING MOTION.

Abdul Kadir Kassim for the appellant.

Zulkifli bin Mahmood (Senior Federal Counsel) for the respondent.

Chang Min Tat J.: This is a case stated under the provisions of section 39 of the Stamp Ordinance No. 59 of 1949 for the decision of the High Court whether the proper stamp duty chargeable on a Loan Agreement dated July 15, 1974 (the agreement) between Pernas Securities Berhad (the appellant) and American International Assurance Co. Ltd. (the lender) is as a security or as a mere agreement. As a security for a loan of $10 million it would attract stamp duty to the tune of $49,997 under Item 22(1)(a) read in conjunction with Item 27(a) of the First Schedule of the Stamp Duty (Special Provisions) Malaysia Act, 1967, and as a mere agreement which is not a security, the stamp duty would be $1 under Item 4 of the First Schedule.

The loan agreement which was executed on July 15, 1974 is a rather intriguing instrument. The recital is to the effect that the lender has agreed to lend, at the request of the appellant, the sum of $10 million upon the terms and conditions contained therein. Clause 1 refers to this agreement and specifies the interest to be 9% on the principal of the loan. The whole sum is not however to be made immediately available or in one lump sum. By Clause 2, it is to be given by 9 instalments spread over a year and according to the timetable specified as a schedule to the agreement and termed the "break-down" schedule, the instalments which with the exception of the first, are all of $1 million each, the first being of $2 million, are to be made by certain specified dates. Provisions and penalties are made for early and late advances. An early advance of an instalment before the time due will attract interest at the time of the advance. An advance made late or for a smaller sum will cause the lender to pay a penalty. Other provisions are for the payment of interest for the capitalisation of interest and for the mode of payment.

An unusual feature is that upon each advance, the lender is to execute a promissory note, which is more or less in the ordinary form. A specimen is annexed to the agreement. In this form, the lender "unconditionally" promises to pay the amount of the instalment, described as the principal sum together with the agreed rate of interest.

In addition the agreement requires the appellant to comply with certain conditions precedent in the form of a valid and enforceable guarantee by the Government of Malaysia and a written confirmation by the Ministry of Finance that this guarantee is chargeable on the Consolidated Fund of Malaysia. There are also other provisions which are of some significance and relevance in the determination. It is also provided that the law governing the agreement is the law of Malaysia.

By reason of the provision for a separate promissory note for each instalment as per the break-down schedule in the agreement, the appellant contends that the agreement is not a "security", that the security for the loan consists of the several promissory notes and therefore that the agreement is a mere agreement for the loan. It merely gives the details of how the whole loan is to be made.

Before proceeding further, it may be useful to remind myself of the principles to adopt in construing provisions for imposing duty, and I think I can do no better than to cite the following passage from *Halsbury's* Laws of England Vol. 33 at pp. 266-267:

"In construing provisions imposing the duty, strict attention must be paid to the actual words used by the legislature, but the words themselves must be understood in a 'popular' sense, that is, the sense which persons conversant with the subject matter with which the statute is dealing would attribute to them and, although no consideration as to what might be reasonable on the one hand, or oppressive on the other, can affect the conclusion, ambiguous words are construed in favour of the subject. Formerly a liberal construction was given to exceptions, but the tendency in recent years seems to be towards a stricter construction. The duty being imposed upon instruments and not upon transactions, the fact that it may not be possible to devise a means for effecting the latter without resort to the former is no ground for straining the words of the statute in order to prevent such means of escaping liability...."

Sergeant on Stamp Duties (6th Edn.) has this to say at page 4 on technical words:

"Acts of Parliament imposing stamp duties ought to be construed according to the plain and ordinary meaning of the words used, as it appears from the words themselves and the court will not adopt a strained and forced construction in order to avoid incongruity. But in taxing Acts, technical words are given their technical meaning. It must be remembered, however, that the Stamp Act itself contains several definitions of words which are at variance with their technical meaning. By virtue of various extending provisions in the Act, the expression 'conveyance or transfer on sale' has a wider meaning than under the general law and other words such as 'security' have by decisions of the courts acquired meanings peculiar to the law of stamp duty."

Next, it is to be observed, as the Collector did, that there is no definition of security in the Ordinance nor in the Stamp Act of England. The learned author of The Law of Stamp Duties, edited by *Alpe* (25th Edition) relies on the dictionary meaning of the word, which in the Shorter Oxford English Dictionary is given as, *inter alia*, "a document held by a creditor as guarantee of his right to payment, hence any form of investment guaranteed by such documents," and as he says, it seems clear from the nature of stamp duties, the meaning is confined to instruments. As the passage cited above stressed, the duty is imposed on the document and not on the transaction.

The appellant contends in the first place that the loan agreement falls squarely within Item 4 of the Schedule. This item reads:

"4. Agreement or memorandum of agreement made under hand only, and not otherwise specially charged with any duty, whether the same is only evidence of a contract or obligatory on the parties from its being a written instrument."

It will be obvious, reading this item and giving to the words their ordinary grammatical meaning, that to fall within it, the agreement or memorandum of agreement must be made under hand only. But the fact is that though it is termed an agreement and not a deed, it is made under the appellant's seal.

Then, with respect, the stress that is laid on the covenants in the agreement under seal which came up for consideration in *Jones.* v. *Commissioners of Inland Revenue*[1] relied upon by Encik Abdul Kadir Kassim, learned counsel for the appellant, to distinguish his case is of particular relevance in the presence of the deliberate use of covenants in the agreement.

Encik Abdul Kadir Kassim also relies on *Independent Telivision Authority & Anor.* v. *Inland Revenue Commissioners*[2] to take his case outside the net of Item 22. That authority establishes that the agreement under seal was caught by the words "being the only or principal or primary security . ." in the case of a bond, covenant or instrument of any kind whatsoever in Schedule 1 to the Stamp Act, 1891 and therefore chargeable to *ad valorem* stamp duty. The relevance of that case is said to be that such duty is payable only where the document is the only document. It is contended that in the case under consideration, the agreement is not the only document. There are other documents, namely, the promissory notes to be executed on each instalment of the loan being made.

This argument seems, with the greatest of respect, unreal in the context of the very obvious inten-

tion of both parties to the granting of the loan. If the loan agreement is determined to be a mere agreement and not a security, duty at the same rate on an identical aggregate would have to be paid on the promissory notes since in the contention of the appellant they furnish the securities for the lender.

Be that as it may, the question before me is whether the agreement comes within the ambit of Item 22(1)(a) read in conjunction with Item 27(a) of the First Schedule. Item 22(1)(a) reads in its relevant parts:

"22. Bond, covenant or instrument of any kind whatsoever (1) being the only or principal or primary security... for any sum or sums of money at stated periods....

(a) for a definite and certain period, so that the total amount to be ultimately payable can be ascertained."

The proper stamp duty for such an instrument is "the same *ad valorem* duty as a charge or mortgage for such total amount." Item 27 lays down the duty for a charge or mortgage at $2 for the first $1000 and $2.50 for each additional $500 or part thereof.

In my view and with respect, the agreement must be read for its full effect. In the first place, the promissory note is a mere undertaking, however unconditionally it may be expressed, to repay the instalment and the agreed interest. The only other indication is the date of repayment contained in a note at one corner under "maturity-date". It is silent as to any provisions for the payment of the interest charged. Such provisions are made and are contained in Clause 3.3 of the agreement. They are for quarterly payments. Other provisions are for capitalisation of interest in the event of late payment. Another, a provision not contained in the promissory note, is made for the earlier repayment of the loan. It specifies the notice that is to be given and lays down a penalty, presumably to make up, at least in part, for the interest lost. What appear however to me to be most significant are the clauses specifying the conditions precedent and the additional securities by way of warranty and further undertakings, which are all designed to safeguard the viability of the appellant-borrower as a trading concern and therefore its ability to repay. It is therefore, in my view, and with respect, clear and beyond argument that the promissory note provides no security that is not given in the agreement and that in fact the full protection of the lender is provided for in the agreement. One begins to wonder at this requirement for the promissory notes save as an indication of the time each instalment is made.

In these circumstances, I am of the opinion that the document in question is the principal or primary security and therefore chargeable under Item 22(1)(a) of the First Schedule to the Stamp Duty (Special Provisions) Malaysia Act, 1967, at the rate set out in Item 27.

It may of course be that the appellant is under an apprehension that he will have to pay the same *ad valorem* duty on the promissory notes. If so, he will have to pay roughly twice the amount he had paid. But it seems to me, however, though I am not deciding this issue, that he will have a good case to bring the promissory notes under Item 22(2) as "collateral or auxiliary or substituted" securities, for each of which the maximum stamp duty is $5. If I am right, then, as I have found some delight in working it out, the only difference is a mere additional $68, from which he may take some consolation.

Ad valorem stamp duty:
$2.00 for the first $1,000 and
$2.50 for such additional $500 or part thereof.

A: as contended by Revenue			
(1) on $10,000,000, for first $1,000 for balance $9,999,000, as per	$ 2.00		
500 | 9,999,000			
1 9998			
2.50			
49,995.00	$49,995.00		
(2) on 9 P/Ns. as collateral security at $5/- each	$ 45.00	$50,042.00	
B: as contended by appellant:			
(1) on agreement	$ 1.00		
(2) on P/N for $2,000,000 on first $1,000	$ 2.00		
on balance of $1,999,000 as per			
500 | 1,999,000			
3998			
2.50			
9995.00	$ 9,995.00		
(3) on a P/N for $1,000,000 on first $1,000	$ 2.00		
on balance of $999,000 as per			
500 | 999,000			
1998			
2.50	$ 4,995.00		
(4) on 7 other P/Ns for $1,000,000	$34,979.00	$49,974.00	
	DIFFERENCE	$ 68.00	

Order accordingly.

Solicitors: *Ariffin & Ooi.*